STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED November 4, 2014
v	No. 321647 Tuscola Circuit Court
MICHAEL WILLIAM LANGENBURG, Defendant-Appellee.	LC No. 14-013035-FH

Before: CAVANAGH, P.J., and JANSEN and RONAYNE KRAUSE, JJ.

PER CURIAM.

The prosecution appeals by leave granted the circuit court's order denying its motion to amend the information to reinstate a charge of fourth-degree fleeing and eluding under MCL 750.479a(2). We reverse and remand for further proceedings consistent with this opinion.

On January 5, 2014, a Department of Natural Resources ("DNR") conservation officer was patrolling on a DNR snowmobile equipped with six flashing blue LED lights and marked with conservation officer shields on both sides of the sled. He noticed a group of five snowmobiles, the second of which was operated by defendant and had no trail sticker and an expired registration. The officer activated his lights and directed the group to pull over to the side. Several snowmobiles pulled over but defendant accelerated forward. The officer pursued defendant out of the field in which he initiated the stop and onto north bound Koepfgen Road. He estimated their speed at 40 to 45 miles per hour. Although he signaled for defendant to stop several times, defendant did not comply. The officer followed defendant off the roadway and through a second field until he came to a rest behind a residence, at which point he took defendant into custody.

The prosecution argued before the district court that defendant should be bound over on a charge of fleeing and eluding, fourth-degree, in violation of MCL 750.479a because defendant's snowmobile was a motor vehicle when it was operated on the roadway. The district court held that the snowmobile was not a motor vehicle under the Michigan Vehicle Code ("MVC"), MCL 257.1 *et seq.*, reasoning that (1) the Natural Resources and Environmental Protection Act ("NREPA"), MCL 324.101 *et seq*., has an almost identical section, MCL 324.82135, prohibiting fleeing and eluding on a snowmobile, (2) *People v Rogers*, 438 Mich 602; 475 NW2d 717 (1991), was not dispositive because it defined a snowmobile as a "vehicle" but not a "motor vehicle," and (3) a snowmobile could not be a motor vehicle under the MVC because it did not

require a motor vehicle license to operate and because it was not required to be registered under that act.

Plaintiff moved to amend the information in the circuit court to once again include the fourth degree fleeing and eluding charge. However, the circuit court denied the motion stating that it could not substitute its judgment for that of the district court.

A district court's decision to bind over a defendant is reviewed for an abuse of discretion. *People v Waterstone*, 296 Mich App 121, 131-32; 818 NW2d 432, 437-38 (2012). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes," and it is a necessarily an abuse of discretion when a trial court makes an error of law. *Id*. Interpretation and application of a statute is a question of law reviewed de novo. *McAuley v Gen Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998).

The foremost rule of statutory construction or interpretation is to discern and give effect to the intent of the Legislature. *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013). Each word or phrase of a statute is given its commonly accepted meaning unless a word or phrase is expressly defined, in which case courts must apply the word or phrase in accordance with that definition. *McAuley*, 457 Mich at 518. Unambiguous statutory language is enforced as written. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). Judicial construction of unambiguous language is not permitted. *Id*. We must give effect to each phrase, clause or word in a statute. *Id*. at 237. "To discern the true intent of the Legislature, the statutes must be read together, and no one section should be taken in isolation." *Apsey v Memorial Hospital*, 477 Mich 120, 132 n 8; 730 NW2d 695 (2007).

Separate statutes that "relate to the same subject or that share a common purpose are in pari materia and must be read together as one law, even if they were enacted on different dates." *Van Guilder v Collier*, 248 Mich App 633, 638; 650 NW2d 340 (2001).

> Statutes in pari materia are those which relate to the same person or thing, or to the same class of persons or things, or which have a common purpose; and although an act may incidentally refer to the same subject as another act, it is not in pari materia if its scope and aim are distinct and unconnected. It is a well-established rule that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although they were enacted at different times, and contain no reference to one another. [*Rogers*, 438 Mich at 608 (opinion by MALLETT, J.) (quotation marks and citation omitted).]

Fleeing and eluding a police officer or conservation officer is prohibited by MCL 750.479a, which provides:

> (1) An operator of a motor vehicle or vessel who is given by hand, voice, emergency light, or siren a visual or audible signal by a police or conservation officer, acting in the lawful performance of his or her duty, directing the operator to bring his or her motor vehicle or vessel to a stop shall not willfully fail to obey

> that direction by increasing the speed of the vehicle or vessel, extinguishing the lights of the vehicle or vessel, or otherwise attempting to flee or elude the police or conservation officer.
>
> (2) Except as provided in subsection (3), (4), or (5), an individual who violates subsection (1) is guilty of fourth-degree fleeing and eluding, a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

Within the Michigan penal code, MCL 750.1 *et seq.*, the term "motor vehicle" is defined as "all vehicles impelled on the public highways of this state by mechanical power, except traction engines, road rollers and such vehicles as run only upon rails or tracks." MCL 750.412.

NREPA includes a subchapter on motorized recreational vehicles with a specific part dedicated to snowmobiles, MCL 324.82101 *et seq*. Therein, a snowmobile is defined as

> any motor-driven vehicle designed for travel primarily on snow or ice of a type that utilizes sled-type runners or skis, an endless belt tread, or any combination of these or other similar means of contact with the surface upon which it is operated, but is not a vehicle that must be registered under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923. [MCL 324.82101(w).]

The same subchapter also sets forth language describing a fleeing-and-eluding misdemeanor, which provides:

> An operator of a snowmobile who is given by hand, voice, emergency light, or siren a visual or audible signal by a peace, police, or conservation officer acting in the lawful performance of his or her duty, directing the operator to bring his or her snowmobile to a stop, and who willfully fails to obey the direction by increasing his or her speed or extinguishing his or her lights, or who otherwise attempts to flee or elude the officer, is guilty of a misdemeanor. [MCL 324.82135.]

The MVC defines "motor vehicle" as "every vehicle that is self-propelled," excepting certain industrial equipment and electric vehicles not relevant here. MCL 257.33. Separately, the term "vehicle" is defined in the MVC as "every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices exclusively moved by human power or used exclusively upon stationary rails or tracks . . . ." MCL 257.79.

In *Rogers*, a plurality decision, our Supreme Court addressed "whether it is lawful to charge one who is operating a snowmobile while intoxicated with a violation of the Michigan Vehicle Code." *Id*. at 604 (opinion by MALLETT, J.). In the lead opinion, Justice MALLETT concluded that although "[a] snowmobile is a vehicle generally prohibited from operating on a highway," limited exceptions existed such that a "defendant's snowmobile is a vehicle to which

the terms of the OUIL[1] statute literally apply." *Id*. at 606. After determining that the statute applied, Justice MALLETT considered defendant's argument that the former snowmobile act was "a regulatory scheme separate and distinct" from the MVC and that, as a more specific statute, it prevailed over the general MVC. *Id*. at 607. Given that snowmobiles could be operated on the highway under limited circumstances, Justice MALLETT concluded that the acts overlapped and shared "a common application to snowmobiles when operated on highways." *Id*. at 608. Justice MALLETT concluded:

> Therefore . . . when defendant drove his snowmobile on the highway while intoxicated, his conduct was within the ambit of both [acts]. Accordingly, the prosecutor has broad discretion to determine under which of the two applicable statutes to prosecute. [*Id*. at 609.]

In a concurring opinion, Justice BRICKLEY considered "whether a snowmobile is even a vehicle to which the Motor Vehicle Code provisions can possibly be applied" and noted that "the snowmobile act itself defines a snowmobile not only as a vehicle, but also as a motor vehicle." *Id*. at 614-615 (opinion by BRICKLEY, J.). Despite the fact that snowmobiles were not subject to the registration requirements of the MVC, Justice BRICKLEY concluded "that a snowmobile is a vehicle to which certain provisions of the Motor Vehicle Code can possibly be applied." *Id*. Justice BRICKLEY determined that the snowmobile act and the MVC were in pari materia; he observed that whereas the snowmobile act was "specific about what vehicle is covered and general about the location of the vehicle," the MVC provision at issue was "specific about the location of the vehicle and general about which vehicle is covered." *Id*. at 618. Given this statutory distinction between the location and type of vehicle, Justice BRICKLEY concluded that the MVC provision "supplements [the snowmobile provisions] when snowmobiles are driven on the highway." *Id*. at 619-620.

Although the snowmobile act under consideration in *Rogers* has now been repealed,[2] the statutes under consideration in the present case have substantially similar language and thus the same principles apply. Justices MALLETT and BRICKLEY both concluded that a snowmobile may constitute a motor vehicle within the meaning of the MVC when operated upon a highway. *Rogers*, 438 Mich at 606 (opinion by MALLETT, J.), 615 (opinion by BRICKLEY, J.).

Defendant insists that the specific provisions of the NREPA pertaining to snowmobiles should control over the MVP. However, we are persuaded by the rationale of our Supreme Court in *Rogers*. Under the penal code section advanced by plaintiff, an "operator of a motor vehicle" may not flee or elude a conservation officer, MCL 750.479a(1), and a motor vehicle is defined within the penal code as a vehicle operated "on the public highways of this state," MCL 750.412.

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[1] MCL 257.625.

[2] See MCL 324.90106.

Therefore, we conclude that when a snowmobile is operated on a highway, it is a motor vehicle subject to the MVC and the penal code.[3]

As in *Rogers*, the charging statute covers any vehicle operated in a specific location (i.e., on a highway), while NREPA covers a specific type vehicle (i.e., a snowmobile) operated in any location. See *Rogers*, 438 Mich at 618 (opinion by BRICKLEY, J.). Snowmobiles may operate on the public highways under the current act. MCL 324.82119(1)(a). Thus, if it is ultimately determined by the trier of fact that defendant fled the conservation officer over parts of Koepfgen Road, as charged, then defendant will be subject to MCL 750.479a. It was and remains within the prosecutor's discretion to decide which charge to pursue. See *Rogers*, 438 Mich at 609 (opinion by MALLETT, J.).

The district court committed an error of law by holding that defendant's snowmobile was not a motor vehicle when it was operated on the highway. Accordingly, the district court abused its discretion when it failed to bind over defendant on a charge of fourth-degree fleeing and eluding under MCL 750.479a(2). The circuit court likewise abused its discretion by failing to grant plaintiff's motion to amend the information because it relied upon the erroneous conclusion of the district court. We reverse the decisions of the district court and circuit court. We remand this matter to the circuit court with instructions to amend the information and reinstate the charge of fourth-degree fleeing and eluding under MCL 750.479a(2).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Amy Ronayne Krause

[3] Although the district court attempted to distinguish the terms "vehicle," "motor vehicle," and "motor-driven vehicle," these same three terms were considered by Justice BRICKLEY, who concluded that "the snowmobile act itself defines a snowmobile not only as a vehicle, but also as a motor vehicle." *Rogers*, 438 Mich at 615 (opinion by BRICKLEY, J.). The district court also relied on the fact that snowmobiles are not required to register under the MVC and a snowmobile operator is not required to possess a motor vehicle driver license. However, Justice MALLET specifically rejected a challenge based on the lack of a license requirement, *Rogers*, 438 Mich at 611-612 (opinion by MALLETT, J.), and Justice BRICKLEY rejected the registration argument, *id.* at 615 (opinion by BRICKLEY, J.). Finally, the district court relied on the fact that part of the penalty for fleeing and eluding is suspension of the defendant's driver license, and that no such license is required of a snowmobiler. However, other sections of NREPA provide for driver license suspension as a sanction for failure to follow provisions relating to snowmobiles as well. See MCL 324.82105a(2). Consequently, this factor was not dispositive.